Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

COMMENTS of BUDGET PREPAY,® INC., GREATCALL, INC., AND PR WIRELESS, INC.

David A. LaFuria
Jeffrey A. Mitchell
Todd B. Lantor
Steven M. Chernoff

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Counsel for Budget PrePay, Inc.
GreatCall, Inc. and PR Wireless, Inc.

April 21, 2011

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DISCUSSION 3

A. The Low Income Program Should Not Be Capped. 3

B. Performance Standards Should Not Ignore the Broader Economic Value Provided by Ensuring Services are Available to Low Income Citizens. 5

C. Barriers to Program Entry Should Be Reduced Through Automatic Enrollment and Broadened Eligibility Criteria. 6

D. Link Up Charges Should be Considered Customary When Applied Indiscriminately Across a State 7

E. Link Up Support Should Be Available to Non-Facilities Based Providers. 8

F. The One-Per-Residence Rule Makes No Sense in a World of Increasingly Ubiquitous Mobile Communications 9

G. Absent Negligence, Carriers Should Not Be Liable for Suspected Duplicate Claims. 11

III. CONCLUSION 14

SUMMARY

Budget PrePay, GreatCall and PR Wireless welcome and support the Commission's efforts to modernize the Low Income universal service programs (Lifeline and Link Up). The Commission's efforts present an important opportunity to clarify the rules governing the Low Income program, and to modernize those rules to address the rapidly changing telecommunications landscape. Nevertheless, the Companies are concerned by seemingly contradictory policy proposals in this NPRM. On one hand the Commission proposes to greatly expand the Low Income program by increasing participation rates and possibly fund Low Income broadband – both outcomes the Companies would support; on the other hand, the Commission proposes to cap the growth of the fund – which the Companies strongly oppose.

The Commission, in seeking to address this apparent contradiction, proposes rules to address presumed duplicate Lifeline subscribers on the assumption that this will free up a substantial amount of Low Income funding under the proposed cap. However, the one "line" per residence rule the Commission proposes perhaps made sense in a bygone era dominated by wireline service, but it is an anachronism now. Moreover, much of the cost-savings resulting from imposition of such a rule could come by pushing otherwise eligible Lifeline subscribers out of the program. Accordingly, the Companies' initial comments focus principally on opposing a Low Income program funding cap, on the practical and policy problems with implementing the proposed one-per-residence rule for Lifeline, and on requiring carriers to assume an investigative and enforcement function in the Lifeline program.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

COMMENTS of BUDGET PREPAY,® INC., GREATCALL, INC., AND PR WIRELESS, INC.

Budget Prepay®, Inc. ("Budget PrePay"), GreatCall, Inc. ("GreatCall"), and PR Wireless Inc. d/b/a Open Mobile ("PR Wireless") (collectively referred to as "the Companies") by counsel, and pursuant to the Federal Communication Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") released March 4, 2011,[1] hereby submit comments in the above-referenced proceedings.

I. INTRODUCTION

Budget PrePay, based in Bossier City, Louisiana, and founded in 1996, provides low-cost prepaid home telephone services on a nationwide basis through a system of more than 6,800 active agents providing service to over 75,000 customers. Budget PrePay also offers prepaid wireless handsets, wireless recharge minutes, long distance calling cards, and a bill payment system.

[1] Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, 76 Fed. Reg. 16,482 (Mar. 23, 2011).

Budget PrePay operates as a competitive local exchange carrier in several states, and also has been designated as a wireline Eligible Telecommunications Carrier ("ETC") in several states and as a wireless ETC in Louisiana and Arkansas. Budget PrePay currently has applications pending for wireless ETC designations with state utility commissions in Oklahoma and Mississippi and with the Commission for eight additional states and the District of Columbia.

GreatCall provides digital wireless services on a common carrier basis, offering customers affordable mobile wireless phone service at flat rates without fixed-term contracts, credit checks, or termination fees. GreatCall has been providing services under the "Jitterbug" brand name since 2006. The Jitterbug service offers customers the opportunity to purchase phones that are simple and easy to use. Its service plans include simple access to live representatives who can complete calls, program functions into the phone, and provide additional concierge services such as programming contacts and adding calendar events to the customer's phone.

GreatCall is a Delaware corporation, providing service through a combination of its own facilities and pursuant to a Mobile Virtual Network Operator arrangement with Verizon Wireless, which is authorized to provide service via Commercial Mobile Radio Service licenses granted by the Commission. GreatCall has applications pending for wireless ETC designations with the Commission in eight states and the District of Columbia.

PR Wireless is an ETC in Puerto Rico, doing business under the "Open Mobile" brand. PR Wireless has been eligible for support from the High Cost and Low Income programs of the federal universal service fund ("USF") since 2007. PR Wireless is a leader in utilizing federal USF support to make wireless telephone service accessible in rural, high-cost areas, and affordable to low-income citizens.

PR Wireless has taken a leading role in increasing the availability of wireless service in Puerto Rico. Due to its consumer-friendly pricing structure and its diligent Lifeline outreach program, PR Wireless has more than doubled its subscriber base in the last two years. As of December 31, 2010, PR Wireless has more than 125,000 Lifeline customers, which represents more than 40 percent of total Lifeline customers served by all carriers in Puerto Rico, wireless and wireline *combined*. PR Wireless continues to increase the size of its Lifeline-dedicated staff and expects to continue to increase its Lifeline penetration levels significantly over the next several years.

II. DISCUSSION

A. The Low Income Program Should Not Be Capped.

The Companies are concerned that establishing an arbitrary support cap for the Low Income program will undermine the program's statutory mandates for affordability and availability. The Commission notes that the Low Income program currently has a participation rate of about one-third of potentially eligible participants.[2] Without significant reductions in support for existing participants or reduced eligibility criteria, a capped Low Income program cannot sufficiently support new participants – which should be anticipated – much less support Lifeline broadband. Yet, new eligible participants have an equal claim to the statutory purposes of the program as existing eligible participants, and there is no legitimate basis to distinguish between such competing claims for support.[3]

[2] NPRM at ¶ 25.

[3] While the Commission appears to believe a significant amount of support can be freed up with the elimination of "duplicate claims" for support – see NPRM at ¶ 144 – the Commission cites no concrete basis for this conclusion. Thus, it seems premature to conclude there is wide-spread abuse of a rule that remains uncertain in scope.

The Commission argues that a cap is necessary to avoid an excessive USF contribution burden which would discourage adoption and usage of communications services.[4] However, the Commission provides no factual support for this concern. While no one can contest that the USF contribution factor has grown over the years from below 7% to around 15%, there has been no effort to measure the actual dollar impact of USF contribution surcharges relative to other telecommunications-related costs. For example, given the rapidly declining cost per minute of interstate telecommunications service, the combined cost for interstate service (including any USF surcharges) has plummeted notwithstanding increases in the contribution factor. This would strongly suggest that the deleterious effects feared by the Commission are more than offset by the overall decrease in the cost for service. Moreover, the Companies submit that the recent growth of the Low Income Fund is actually a very good development and indicative of the fact that Low Income support is finally reaching many more Americans in desperate need of Lifeline and Link-Up support.

Accordingly, imposing an arbitrary cap on Low Income support cannot be justified absent specific factual findings supporting the contention that the contribution factor has caused, or soon will cause, a decrease in the demand for telecommunications services.[5] Any such analysis should recognize that USF costs cannot be separated from the rapid decline in the cost per minute of interstate service since 1998.[6]

---

[4] NPRM at ¶ 142.

[5] In an era of "triple-plays" and other bundled service offerings, USF costs represent a much smaller percentage of the total cost of these bundles of services than the 15% represented by the current contribution factor. Moreover, when Congress directed the Commission to make universal service support "explicit" – see Section 254(e) – this necessarily set the stage for a growing USF fund as hidden subsidies were gradually eliminated.

[6] According to the most recent FCC data, average revenue per minute for interstate service, including access and universal service charges, declined from 11 cents in 1998 to 7 cents in 2007. *See Trends in Telephone Service at Table* (Ind. Analysis & Tech. Div., WCB, Sep. 2010) at Table 13.4. This decline occurred in spite of the USF contribution factor increasing from 3.18% to 11.0% over the same period.

B. Performance Standards Should Not Ignore the Broader Economic Value Provided by Ensuring Services are Available to Low Income Citizens.

The Companies support the adoption of program performance standards, including the Commission's proposed third standard of sufficiency and fiscal accountability.[7] Nevertheless, it appears the Commission has placed its no-USF growth policy ahead of USF statutory mandates. While rapid growth of the Lifeline program could signal policy failures, growth of the fund can also be consistent with advances in the availability and affordability of telecommunications and advanced services to consumers – precisely as intended by Congress when the Low Income program was codified. The Commission recognizes, for example:

> The emergence of competing carriers and multiple services has enhanced consumer choice, and led to an increase in the average number of monthly minutes included in a Lifeline wireless plan at no charge to the consumer, from about 60 minutes in 2008 to 250 minutes today.[8]

Any justification for imposing a cap on Low Income support must take into account the economic and social benefits associated with such developments. These include increased quality of life, opportunity, and productivity not just for low income beneficiaries but for the broader society. Indeed, the whole concept of universal service is based on the idea that the value of the network to each user is increased the more people are connected to it. Thus, the Commission should not measure performance based solely on costs of the program in relation to an arbitrary support cap while ignoring the broader economic and social benefits made possible by ubiquitous service availability.

---

[7] NPRM at 37.

[8] *See* NPRM at ¶ 104 (footnote omitted).

C. Barriers to Program Entry Should Be Reduced Through Automatic Enrollment and Broadened Eligibility Criteria.

Automatic enrollment efforts have the great potential to increase Low Income program participation from the current rate of one-third of potentially eligible participants. The Companies welcome such efforts while observing that such increased enrollment appears to conflict with the Commission's proposal to cap the Low Income fund at 2010 support levels.

The Companies support changing the federal Lifeline eligibility rules to allow consumers to qualify under the income-based criteria by demonstrating a household income at or below 150 percent of the federal poverty guidelines. Commission data for several states shows that telephone penetration levels dip significantly as household income declines. For example, according to the Commission's most recent Telephone Penetration Report,[9] 97.9 percent of all households in Arizona with incomes of $40,000 or more have access to telephone service, whereas the penetration figure for all households in Arizona with incomes between $30,000 and $39,999 is only 93.5 percent. Similarly, in Georgia, telephone penetration for households with incomes of $40,000 or higher is 98.4 percent, while for households with incomes between $30,000 and $39,999 is only 95.4 percent.

Other states show similar declines in telephone penetration. For example, in New Mexico, telephone penetration for households with incomes of $40,000 or higher is 99.1 percent, while for households with incomes between $30,000 and $39,999 the penetration level is only 92.0 percent. In Tennessee, telephone penetration for households with incomes of $40,000 or higher is 98.2 percent, while for households with incomes between $30,000 and $39,999 the penetration level is only 95.4 percent. Finally, in Texas, telephone penetration for households

[9] *See Telephone Penetration by Income by State (data through March 2009)* (Ind. Analysis Div., Wireline Comp. Bur., rel. May 2010) at Table 4: Percentage of Households with Telephone Service in March 2009, accessed at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297986A1.pdf.

with incomes of $40,000 or higher is 98.7 percent, while for households with incomes between $30,000 and $39,999 is only 95.7 percent. This data evidences a drop off in telephone penetration between households making $40,000 or more, and those that make less.

If the income eligibility threshold were raised to 150 percent of the federal poverty guidelines, the thresholds for both a family of four and a family of five would be below $40,000. This change would, therefore, make Lifeline discounts available to many households with very low incomes who currently cannot afford telephone service. It would also bring the Lifeline program in line with other federal benefits such as Low-Income Home Energy Assistance Program ("LIHEAP") (150 percent in most states).[10] By increasing the availability of telephone discounts to low-income individuals, this change would promote the congressional objective of advancing universal service.

D. Link Up Charges Should be Considered Customary When Applied Indiscriminately Across a State.

The Commission's rules provide that ETCs "may receive universal service support reimbursement for the revenue they forgo in reducing their customary charge for commencing telecommunications service . . . ."[11] The Companies support the Commission's proposed new rule that would "define 'customary charge for commencing telecommunications service' as the ordinary initiation charge that an ETC routinely imposes on all customers within a state."[12] If an ETC requires *all* its customers in the state—not just Lifeline/Link Up customers—to pay an activation charge, then there should be no concern that the ETC has established an activation

[10] *See* U.S. Dept. of Health and Human Svcs., Admin. for Children and Families, LIHEAP Clearinghouse, accessed at http://www.liheap.ncat.org/tables/FY2009/POP09.htm.

[11] 47 C.F.R. § 54.413(a).

[12] *See* NPRM at ¶ 73 (to be codified at 47 CFR § 54.400(e)).

charge only for the purpose of receiving USF reimbursements in the case of its services provided to Lifeline/Link Up customers.

If the carrier is applying the customary charge indiscriminately to all customers in the state in which it is seeking Link Up reimbursements, then the charge is "customary"; all customers must pay it. There would be no basis for concluding that the activation charge is tailored for the narrow purpose of garnering Link Up reimbursements. Whether the carrier applies activation charges in other states, where it does not have any ETC designations, has no bearing on this analysis.

The Companies believe an effective and sufficient means of implementing this proposed rule is to require an ETC to certify to each state commission in which a carrier operates as an ETC (and to the Commission, in states for which the Commission is responsible for designating ETCs pursuant to Section 214(e)(6) of the Communications Act of 1934 ("Act")[13]) that it has established an activation charge that is equally applicable to both Lifeline/Link Up customers and non-Lifeline/Link Up customers on a state-by-state basis. Self-certification should be sufficient because it will be easy to establish whether an ETC is in fact honoring this certification via advertisements and publicly available marketing materials.

E. Link Up Support Should Be Available to Non-Facilities Based Providers.

As noted, Link Up is intended to reimburse carriers "for the revenue they forgo in reducing their customary charge for commencing telecommunications service . . . ."[14] ETCs that are not 100% facilities-based incur set-up charges for commencing service for new customers. There is, thus, no reason that these charges should be treated differently from those of facilities-based ETCs. Budget PrePay and GreatCall both support equal availability of the Link-Up

---

[13] 47. U.S.C. § 214(e)(6).

[14] 47 C.F.R. § 54.413(a).

subsidy and equal application of the Link-Up rules to all ETCs, including those that are not 100% facilities-based.[15]

F. The One-Per-Residence Rule Makes No Sense in a World of Increasingly Ubiquitous Mobile Communications.

American households increasingly view their subscription to more than one wireless telephone line as a necessity rather than a luxury because each household member needs mobility for countless uses and activities, including seeking employment, for participation in school activities, and for personal safety and other emergency situations. As its Orders make clear, the Commission is committed to ensuring that low-income consumers have access to affordable telecommunications and information services that are reasonably comparable to those available in urban areas.[16] The Commission should recognize that the proposed one-per-residence rule will prove too restrictive to serve as an effective vehicle for pursuing the agency's commitment to low-income consumers.

As the Commission notes, "[a]s of June 2010, 93 percent of Americans subscribed to wireless phone services, and more than 25 percent of households were wireless-only."[17] For Low Income citizens to be fully a part of an emerging and dynamic social and economic order made possible by this growing ubiquity of mobile communications, they increasingly need mobile phones. The concept of universal service demands consideration of this fact. Replacing the one-per-residence rule with an eligibility standard that permits each adult in a single household to receive Lifeline assistance aligns more fully with the Commission's commitment and is more reflective of the importance of each adult having access to mobile communications in low-income communities, especially those in remote rural areas.

---

[15] PR Wireless neither supports nor opposes such a policy.

[16] *See* NPRM at ¶ 29 (citing, *inter alia*, 47 U.S.C. § 254(b)(1),(3)).

[17] NPRM at ¶ 104 (citations omitted).

Put simply, the Commission should recognize that mobile phones provide a "lifeline" for *people* not places. For example, a residence with a single mobile phone has no "lifeline" to call emergency services unless the phone subscriber happens to be home. Indeed, partly for reasons of personal safety mobile telephony has quickly become the dominant telecommunications mode wherever it is available across the country. The Commission should embrace this fact and reject an outmoded one-per-residence requirement from the pre-wireless era.

If the Commission is not prepared to take this critical step, the Companies support a one-per household rule that recognizes that more than one eligible lifeline household can exist at either a "residence" or U.S. Postal Address or P.O. Box. This can be implemented by adopting a reasonably broad definition of "household." A workable one-per household policy should continue to rely on customer certification to establish compliance along with annual and audit-driven re-certification. To combat potential waste, fraud and abuse, the FCC should focus on ensuring carriers are consistently employing rigorous subscription in-take procedures that include education and periodic re-certification.

By establishing household eligibility, and recognizing that more than one household can exist at an address, the Commission would avoid having exceptions to the proposed one-per residence rule swallow the rule itself. Indeed, the Commission is considering many worthy and appropriate exceptions to its proposed rule: nursing homes, group homes, unrelated adult roommates, multi-generational families, single-room occupancy hotels, rural areas without postal addressing, etc. The complexity of crafting and administering rules to handle these potential exceptions can be avoided by adopting a rule that defines "household" in an appropriately flexible way and that relies solely on a robust self-certification process to validate compliance with the rule.

With respect to P.O. Boxes, residents in many parts of the country rely disproportionately on P.O. Boxes to receive their mail (*e.g*., rural America, Tribal Lands, and U.S. Territories). There are many reasons for high P.O. Box usage including, in some areas, the complete absence of a rural addressing system. To address this issue, the Commission should treat separate P.O. Boxes as separate households or residences for purposes of any one-per residence or one-per-household rule it adopts. Failure to do so could disproportionately affect citizens who would benefit the most from the Low Income program.

G. Absent Negligence, Carriers Should Not Be Liable for Suspected Duplicate Claims.

As discussed in Section II.F., *supra*, the Commission should recognize the "one per residence" requirement for the anachronism it has become. Instead of adopting such a rule, the Commission should adopt policies that reflect the increased reliance of low-income populations on mobile wireless service both inside and outside the home. As part of these changes, the Commission should do away with the prohibition on households receiving Lifeline discounts from multiple providers.

The Commission has a mandate from Congress to ensure that consumers across the Nation, "including low-income consumers[,]" have access to telecommunications and information services that are reasonably comparable to those available in urban areas, at prices reasonably comparable to those in urban areas. According to the most recent National Health Interview Survey published by the Centers for Disease Control and Prevention, 62.5 percent of adults have both a landline and wireless telephone service.[18] Because consumers across the country typically have both wireline and wireless service, the Commission's "reasonable

[18] "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009" (rel. May 12, 2010) at Table 1.

comparability" principle includes a mandate to ensure that low-income consumers have access to affordable wireline and wireless service, should they choose to have both.

The Commission's concerns about duplicate claims in the Low Income program present a classic dilemma. At the heart of the dilemma is the fact that program compliance ultimately rests on the thousands of eligibility certifications being provided by individual low income subscribers. With respect to the Commission's proposed one-per-residence rule, there will be many situations where Lifeline participants either fail to respond to inquiries about apparent duplicate post office addresses, or will maintain they are eligible notwithstanding. The Commission's proposed approach will resolve any uncertainty in such cases against the carrier and ultimately the subscriber – *i.e.*, when a carrier, with or without the cooperation of the subscriber, cannot prove the subscriber is eligible, the subscriber will be terminated from the program.[19] Such a rule undermines the central purposes of the Low Income program and puts the responsibility for program enforcement on carriers.

Carriers can obtain certifications and verify documentary evidence supporting those certifications during the customer intake process and however often is required thereafter; but there is little else carriers can do.[20] If the Commission adopts a rule that makes carriers liable in cases of uncertain eligibility status, it will cause wide-spread terminations of current participants from Low Income program. Such terminations will inevitably include many participants who are, in fact, eligible. The Companies urge the Commission to proceed carefully.

---

[19] The Companies note that USAC appears to be prematurely enforcing such a standard through its Lifeline Payment Quality Assurance process. Similarly, in Puerto Rico, the Telecommunications Regulatory Board ("TRB") is withholding all support for carriers until the carriers resolve "duplicate" Lifeline accounts and provide evidence to the TRB in particular cases that duplicate accounts do not exist or have been eliminated.

[20] Regardless of which entity (or entities) have the responsibility and authority to investigate a subscriber that continues to claim eligibility notwithstanding a duplicate postal address – USAC, the carriers, Department of Justice, or FCC Enforcement Bureau – it will be costly to do so.

Should the Commission adopt a formal prohibition on receiving discounts from multiple providers, carriers should not be held responsible for ensuring that a particular individual does not receive Lifeline discounts from another provider. This clarification requires no rule change whatsoever, as the Commission's rules currently provide for customer self-certifications under penalty of perjury.

The current rule, together with random audits of individual subscribers by USAC in conjunction with state and territory commissions, should be an adequate safeguard against customers receiving discounts from multiple providers. The burden of seeking out evidence of multiple discounts, and taking action to eliminate any duplication, should not be placed on carriers, but rather should be the responsibility of the administering agencies. That said, the Companies would support the creation of a national database as a resource for carriers to utilize to validate whether potential subscribers are being served by other carriers.

III. CONCLUSION

Based on the foregoing, the Companies request that the Commission not impose a cap on the Low Income program or, in the alternative, that it not do so without further fact finding on the economic and social benefits of the Low Income fund and the potential effects of a larger USF contribution factor on consumers. Budget PrePay and GreatCall ask the Commission to affirm that Link Up charges are customary when they are applied indiscriminately within a state and that providers that are not 100% facilities-based be considered eligible for participation in the Link Up program. Finally, the Companies urge the Commission to not to impose wireline rules on a wireless age, and that carriers, absent negligence, not be held liable for the misrepresentations of their customers.

Respectfully submitted,

BUDGET PREPAY®, INC.
GREATCALL, INC.
PR WIRELESS, INC.

By:___________________________

David A. LaFuria
Jeffrey A. Mitchell
Todd B. Lantor
Steven M. Chernoff

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Their Counsel

April 21, 2011